

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 3906 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GD GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3906 of 1996
MR IS SUPEHIA for Petitioner No. 1
Mr. H.M. Prachchhak, AGP for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 17/12/2004

ORAL JUDGEMENT

1. At the outset, the learned advocate for the petitioner states that he does not press prayers 16(A) and 16(B) of the petition, and he restricts his arguments qua prayer 16(C) of the petition pertaining to the impugned order dated 27th October 1994, and submits that, by virtue of the said order, amount recovery is deducted and it is not in consonance with the principles laid down by this Court vide its judgment and order dated 4th April 2001 rendered in Letters Patent Appeal No.578 of 2000, and the judgments of the Apex Court in the case of Sahib Ram vs. State of Haryana and others, reported in 1995 Supp (1) Supreme Court Cases 18, and in the case of Shyam Babu Verma and others vs. Union of India and others,

reported in (1994) 2 Supreme Court Cases 521, wherein, it is observed that, upgraded pay-scale was given due to wrong construction of the relevant order by the authority concerned without any misrepresentation by the employee, and, in such circumstances, no recovery be initiated of the payment already made to such employee. In the present case, by the order dated 15th February 1986, the petitioner was given the selection grade with effect from 1st May 1983, which was subsequently abolished with effect from 1st January 1986.

2. As per the case of the respondents, the Government Resolution dated 5th July 1991 by which the petitioner was given the benefit of higher grade scale with effect from 1st June 1987, came to be modified by the subsequent Resolution dated 16th August 1994, and, therefore, in view of the subsequent resolution and the provisions contained therein, it was found that the benefit of higher grade scale given to the petitioner was required to be modified and effective date was changed from 1st June 1987 to 1st May 1992 and, accordingly, for the difference of pay-scale, the said amount was sought to be recovered from the salary of the petitioner.

3. By the order dated 6th June 1996, the Court stayed the order of recovery and, subsequently, the said ad-interim relief was continued till further orders by order dated 24th June 1996.

4. Learned Assistant Government Pleader, Mr. H.M. Prachchhak, appearing for the respondents, has, fairly, conceded to the position of law in this regard and the subject matter of the present writ petition is covered by the law laid down by this Court as well as the Supreme Court, as referred to hereinabove.

5. In view of the settled position of law, the impugned order dated 27th October 1994 passed by the respondents against the petitioner by modifying the effective date of higher grade pay-scale is not to be implemented only qua recovery of salary, which was paid to the petitioner pursuant to the earlier Government Resolution dated 5th July 1991.

6. In that view of the matter, the respondents are restrained from effecting recovery of the salary paid to the petitioner as per the Government Resolution dated 5th July 1991, as modified subsequently by the Resolution dated 16th August 1994. It is, however, clarified that, barring effective of recovery, the modification carried out by the respondents vide Resolution dated 16th August

1994 shall remain in operation. Rule is made to the extent indicated hereinabove, with no order as to costs.

(Anant S. Dave, J.)
(swamy)